

**BOARD OF MEDICINE
EXECUTIVE COMMITTEE**

MINUTES

DECEMBER 13, 2002

Harry C. Beaver, M.D., Chair, called the meeting of the Executive Committee to order at 8:00 a.m., at the Department of Health Professions ("DHP").

MEMBERS PRESENT: Harry C. Beaver, M.D., Chair
J. Kirkwood Allen, Citizen Member
Robert P. Nirschl, M.D.
Dianne L. Reynolds-Cane, M.D.
Kenneth J. Walker, M.D.
Jerry R. Willis, DC

MEMBERS ABSENT: Cheryl Jordan, M.D.

STAFF PRESENT: William L. Harp, M.D., Executive Director
Ola Powers, Deputy Executive Director of Licensure
Karen Perrine, Deputy Executive Director of Discipline
Kate Nosbisch, Deputy Executive Director of Physician Profile
Robert Nebiker, Director, DHP
Elaine Yeatts, Senior Regulatory Analyst
Roscoe Roberts, Assistant Attorney General
Deborah A. Ordiway, Recording Secretary

GUESTS PRESENT: Warren Koontz, MD; Bill McKelway, *Richmond Times-Dispatch*; Gene Kastelberg, MD; John Talmadge, DC, Virginia Chiropractic Association; William E. Ashworth, DC; Virginia Chiropractic Association; Susan Ward, VHHA; David H. Kaluszka, DC, Virginia Chiropractic Association; Michael D. Johnson, DC, Virginia Chiropractic Association; and Robin Farmer, *Richmond Times Dispatch*

ADOPTION OF AGENDA

Dr. Walker moved to adopt the amended agenda. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

APPROVAL OF MINUTES – AUGUST 2, 2002 MEETING

Dr. Beaver moved to approve the minutes of the Executive Committee dated August 2, 2002. The motion was seconded and carried unanimously.

#1 Regulation Actions – Ms. Yeatts

18 VAC 85-110-10 et seq., Regulations Governing Licensed Acupuncturists

Dr. Willis moved to adopt the regulations governing licensed acupuncturists as final regulations. The motion was seconded and carried unanimously.

18 VAC 90-30-10 et seq., Regulations Governing the Practice of Nurse Practitioners

Dr. Willis moved to adopt the regulations governing the practice of nurse practitioners. The motion was seconded and carried unanimously.

#2 Recommendations from the Legislative Committee regarding the disciplinary process – Ms. Perrine

Ms. Perrine stated that Delegate Sears' bill added a monetary penalty cap and the Legislative Committee felt there should not be a cap but a baseline fine with a continuing fine imposed for every day for noncompliance.

Mr. Nebiker stated that the section dealing with hospital reporting affects all 13 health regulatory boards within DHP. It changes the threshold for reporting. It requires that any adverse action regarding any healthcare professional be reported while under review or investigation. Adverse action shall include, but not be limited to (i) limiting, reducing, restricting, placing on probation or on a leave of absence, suspending, revoking, denying, refusing or failing to renew or terminating clinical or practice privileges or membership in a hospital or other health care institution, (ii) imposing a summary, temporary or immediate suspension or practice, whether or not final under the hospital or other health care institution's procedures, when such action is taken in good faith that failure to take such action may result in substantial danger to the health of any person, and (iii) terminating employment or demoting, transferring or reassigning a health care professional for reasons relating to professional conduct or competence.

Mr. Nebiker stated that Delegate Sears' bill has been prefiled. The board may develop alternatives to Delegate Sears' legislation.

Dr. Nirschl moved that staff draft a position statement ("Report") to be submitted to Delegate Sears based on the discussion. The motion was seconded. Mr. Nebiker stated that the board would be endorsing the draft legislation from pages 23-27 regarding § 54.1-2906 hospital reporting as found in the agenda package with the recommendations of the Legislative

Committee and understanding that there is an issue related to the definition of “health care institutions” that needs to be resolved. The motion carried unanimously.

Dr. Cane moved that a statement be included in the Report stating that the draft language on a confidential letter of assurance as drafted by staff is approved by the board. The motion was seconded and carried unanimously.

Mr. Nebiker stated the next issue is the change in the evidentiary standard. Delegate Sears’ bill does not cover this issue at all. The Board’s recommendation stated that the decision of the Board, or a panel thereof, to (i) revoke or suspend a license, registration or certificate or (ii) to reinstate a license, registration or certificate shall be based upon clear and convincing evidence. All other determinations shall be based upon a preponderance of the evidence.

Dr. Nirschl moved to adopt the above standard of proof and that it be included in the Report. The motion was seconded and carried unanimously.

Ms. Perrine stated that there is a recommendation for elimination of a procedural step from moving a case from an informal to a formal hearing in §54.1-2919. Dr. Willis moved to include the elimination of the procedural step in the Report. The motion was seconded and carried unanimously.

Mr. Nebiker’s review of Delegate Sears’ Bill

Mr. Nebiker stated in Delegate Sears’ bill there is an amendment to the confidentiality statute of § 54.1-2400.2 to say that a confidential consent agreement would not be considered a notice or an order.

There is a change in § 54.1-2400.4(C) to the reporting requirement for mental health service providers. Any person who fails to make a report to the Department pursuant to this section shall be subject to a civil penalty not to exceed \$5,000.

There is also a change to § 54.1-2408.2 which would set a three-year minimum period for reinstatement of one’s license after revocation.

Dr. Cane moved to include in the Report that for individuals whose licenses were revoked or petition for reinstatement denied, there would be a one to three year waiting period, as determined by the Board, before allowing application for reinstatement of a license. The motion was seconded and carried unanimously.

Dr. Cane moved that the reporting period for hospitals to report hospital peer review cases under new law be 30 days. This change would be in the Report. The motion was seconded and carried with Dr. Willis opposed.

Dr. Nirschl moved that § 54.1-2909(A)(4) and § 54.1-2915(A)(4) be changed to intentional or negligent conduct as in Delegate Sears’ bill, and this position be in the Report. Further, the

Report should point out the link between the “confidential letter of assurance” tool and this change in the standard. The motion was seconded and carried unanimously.

Dr. Nirschl moved to include in the Report support for the amendment to § 54.1-2911 to state that the Executive Committee be composed of at least two citizen members provided that the law also increased the Committee to eight members. The motion was seconded and carried unanimously.

#3 Update on the Practitioner Information Project – Ms. Nosbisch

Ms. Nosbisch stated that at the current time 98% of the licensees have completed their profile. The board had decided that the guidelines for online completion specifically stated if one had entered all the information online and neglected to hit the submit button that that would be done on the practitioner’s behalf.

Dr. Cane moved that the practitioner should not be disciplined where there had been a partial filling out of the profile but not submission made by the board prior to October 17. The motion was seconded and carried unanimously.

Ms. Nosbisch stated that there have been 12 notices issued for errors or omissions on the profile and 18 notices have been issued for failure to complete the profile.

Ms. Nosbisch stated that the Executive Committee voted to send courtesy letters to licensees who have missing paid claim information, inaccurate hospital affiliations or incorrect information on their profile. Of the 120 letters sent, 74 licensees have updated their information, eight are still within the 30-day window, and 20 did not comply and an initial investigation has been initiated and a case opened.

With regard to SB59, emergency contact information, 77% have responded. On November 20, 21 and 25 a letter was sent to all licensees informing them of the additional data elements required for profiles. These elements include telephone numbers at all practice addresses, translating services at all practice addresses, felony convictions, and health insurance plans/managed care plans accepted (optional).

The board voted in October to randomly select 1-2% of licensees for an audit of both CME and profiling. Ms. Nosbisch asked the committee about the audit process for the profile. Some sections of the profile would be hard to verify and some would be easily verifiable. It was suggested that the easily verifiable data elements of the profile, such as Virginia hospital affiliations, education, postgraduate education, board certification, felony convictions, actions taken by states/organizations, and paid claims be verified.

Dr. Walker moved that a review audit be done on items that are easily verifiable. The motion was seconded and carried unanimously.

Dr. Nirschl moved that there be communication to the practitioner's to state you are in violation of not completing your profile and have the staff develop language for wordage on the outside envelope that would draw the practitioner's attention to the material. The motion was seconded. Dr. Nirschl also stated that there should be a 30-day drop-dead date from the date of the letter for completion of the profile data. Ms. Perrine stated that in the regulations there is a 30-day requirement.

Dr. Nirschl added a third part to his motion wherein he stated that the drop-dead date for submission be January 31, 2003.

Ms. Nosbisch requested that a second notice mailing be sent out to those practitioners that have not complied by December 31, 2002. Dr. Nirschl accepted this amendment request. The motion carried unanimously.

#4 USMLE Step 3 examination applications – Ms. Powers

Mrs. Powers asked that the board approve a full-service contract with the Federation of State Medical Boards for the USMLE Step 3 examination applications.

Dr. Willis moved to approve a full-service contract with the Federation of State Medical Boards, with the details to be developed by board staff and approved and signed by Dr. Harp. The motion was seconded and carried unanimously.

#5 USMLE clinical skills examination – Dr. Harp

Dr. Harp stated that the Federation of State Medical Boards and the National Board of Medical Examiners endorsed a proposal to add a test of clinical and communications skills to the USMLE in the fall of 2004.

Dr. Harp stated that the entire full Board should consider this matter. This topic was tabled until the February 6, 2003 full Board meeting.

#6 Laser hair removal – Dr. Harp

Informational items were contained in the agenda packet reference laser hair removal and laser surgery. Dr. Harp stated that the Department of Occupational and Professional Regulation is currently looking at the possibility of regulating electrologists and aestheticians. Dr. Harp stated the issue at point is the types of devices that are used.

Dr. Cane moved that the Chair appoint an ad hoc committee to study the laser hair removal issue and bring a report to the June 5, 2003 full Board meeting. The motion was seconded and carried unanimously.

#7 Request from the American Board of Forensic Professionals – Dr. Harp

Dr. Harp stated that the American Chiropractic Association House of Delegates adopted a bylaws amendment that established the American Board of Forensics Professionals as a subsidiary of the Council on Chiropractic Orthopedics. They would like the Virginia Board of Medicine to acknowledge in writing the recognition of this affiliation status with the American Chiropractic Association.

Dr. Willis moved that Dr. Harp acknowledge the letter, not the board, and thank Dr. Hopkins for the information. The motion was seconded and carried unanimously.

#8 Communications from Jayson Levine, student at Life University Chiropractic College – Dr. Harp

Mr. Levine wrote a letter reference Life University losing their accreditation status by the Council of Chiropractic Education.

Dr. Willis moved that Dr. Harp send an appropriate response to Mr. Levine. The motion was seconded and carried unanimously.

#9 FSMB call for nominations – Dr. Harp

The Federation requested all member boards to submit names of candidates they would like the committee to consider for nominations for positions to be elected at the Federation's April 12, 2003 House of Delegates annual business meeting.

#10 Information only – Dr. Harp

Dr. Harp stated that new travel regulations are in effect. Mr. Nebiker stated that he will authorize blanket approvals for the meetings on a monthly basis. If the board anticipates the need of staying at a place that will exceed the lodging rates, prior approval will be required. Mr. Nebiker stated that regularly scheduled informal conferences are also covered in his blanket approval. There will be pre-approvals for routine meetings and overnight travel that do not exceed the lodging and M&IE guideline rates. If the overnight travel will exceed the authorized amount, prior approval is required to be reimbursed at a higher rate.

Dr. Harp stated that on October 8, 2002 the U.S. Food and Drug Administration approved buprenorphine and buprenorphine/naloxone for treatment of opioid addiction by individual physicians in the office setting. There will be two workshops for state medical and pharmacy boards covering the provisions of the Drug Addiction Treatment Act of 2000. The first workshop will be offered January 10, 2003 at the Crystal Gateway Marriott in Arlington, VA and the second on February 21, 2003 at the Hyatt Regency DFW in Dallas, TX.

Dr. Harp stated that the Texas State Board of Medical Examiners is looking at implementing proficiency testing by all physicians. At the current time Texas requires out-of-state physicians seeking licensure in Texas to have demonstrated proficiency by passing a nationally recognized examination within the last 10 years. It was stated that this requirement should be required for in-state doctors as well.

Distributed to the committee members was a copy of the HPIP statistics.

#11 Nominating Committee

Dr. Beaver stated that the Nominating Committee would meet at 7:30 a.m. on February 6, 2003. This committee is composed of Dr. Russ, Mr. Rucker and Dr. Jordan. The Executive Committee accepted the nominating committee members. Dr. Walker asked that the chair develop a job description for these positions and that they be sent to the board members. Dr. Beaver stated that he would draft a job description for the positions of president, vice president and secretary/treasurer.

#12 Federation of State Medical Boards Report – Dr. Cane

Dr. Cane stated that the charge of the Special Committee to Evaluate FSMB Elected Leadership Structure was as follows:

- Conduct an assessment of the strengths and weaknesses of the current elected governance structure, including eligibility, qualifications, nomination, election, terms of office, and duties
- Evaluate governance models utilized by other similar national organizations
- Identify key tenets of governance critical to the strategic direction of the organization
- Identify core competencies for candidates for elected office
- Develop recommendations to the Board of Directors designed to strengthen and enhance effectiveness of the FSMB elected leadership structure

This special committee held its first meeting in Euless, Texas on September 20, 2002. The next meeting is tentatively scheduled for June 2003. Your comments and/or suggestions are encouraged.

OTHER BUSINESS

Next Executive Committee Meeting: April 4, 2003, 6603 West Broad Street, Richmond, Virginia.

REVIEW OF CASES RECOMMENDED FOR CLOSURE

ADJOURNMENT

With no further business to discuss, the Executive Committee of the Board of Medicine was adjourned.

Harry C. Beaver, M.D.
Chair

William L. Harp, M.D.
Executive Director

Deborah A. Ordiway
Recording Secretary